

Respondent argues the Board has no jurisdiction to hear this appeal. In the alternative, the Respondent argues the ALJ's Order should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and considering the parties' arguments, the Board finds and concludes that this appeal should be dismissed as it fails to raise an issue over which the Board has jurisdiction to review from a preliminary hearing order.

This is an appeal from a preliminary hearing order. Consequently, not every alleged error is subject to review. The Workers Compensation Act gives this Board specific authority to review the preliminary hearing issues listed in K.S.A. 44-534a, which are: (1) did the worker sustain an accidental injury; (2) did the injury arise out of and in the course of employment; (3) did the worker provide the employer with timely notice and with timely written claim; and, (4) do certain other defenses apply. And the term "certain defenses" refers to defenses that dispute the compensability of the injury under the Workers Compensation Act.¹

Moreover, the Board can review preliminary hearing orders in which an ALJ has exceeded his or her jurisdiction.²

The issues of whether a worker needs ongoing medical treatment or whether the employer is failing to provide appropriate medical treatment are not jurisdictional issues listed in K.S.A. 44-534a that are subject to review from a preliminary hearing order. Those are factual issues, however, over which an ALJ has the authority and jurisdiction to determine at a preliminary hearing.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.³

As provided by the Act, preliminary hearing findings are not final but subject to modification upon a full hearing of the claim.⁴

WHEREFORE, it is the finding of the Board that the claimant's appeal is dismissed and the Order of Administrative Law Judge Kenneth J. Hursh dated November 28, 2005, remains in full force and effect.

¹ *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

² K.S.A. 44-551(b)(2)(A).

³ *Allen v. Craig*, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977).

⁴ K.S.A. 44-534a(a)(2).

IT IS SO ORDERED.

Dated this _____ day of January 2006.

BOARD MEMBER

c: Patrick C. Smith, Attorney for Claimant
Frederick J. Greenbaum, Attorney for Respondent and its Insurance Carrier
Kenneth J. Hursh, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director